

HOUSE BILL 68

By Weaver

AN ACT to amend Tennessee Code Annotated, Title 10;  
Title 33; Title 36 and Title 63, relative to  
consideration of health care records of a parent in  
a child custody case.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 6, Part 1, is amended by  
adding the following as a new section:

36-6-115.

(a) The general assembly finds that the mental health status of a parent can be a  
strong factor in determining the best interests of a child in a child custody proceeding.

(b) Notwithstanding the provisions of § 63-11-213, § 10-7-504 or any privilege or  
provision establishing mental health records as confidential in a child custody case  
under this chapter, if there is any medical evidence that indicates a parent has any  
degree of permanent or temporary mental illness, the court shall take into consideration  
a parent's mental health status.

(c) In making any child custody determination, the court shall consider any  
diagnosis and treatment programs of treating medical care providers, including mental  
health professionals, regarding a parent's mental health in order to determine what  
parenting arrangements would be in the best interests of the child. The court shall  
provide greater weight to medical treatment records than to other types of mental health  
evaluations unless there is clear and convincing evidence that the medical treatment  
records are unreliable, understated, or materially inaccurate.

(d)

(1) Medical records, including mental health records, if any, of any parent who has been evaluated, diagnosed or treated for mental health status are subject to discovery pursuant to the rules of civil procedure and this section whenever a custody proceeding or a good faith need for a modification of custody exists.

(2) Upon the filing of any child custody proceeding, a parent may petition the court for a qualified protective order allowing the parent and the parent's attorney the right to obtain protected health information from records or during depositions from or with the relevant patient's treating healthcare providers. Such petition shall be granted under the following conditions:

(A) The petition must identify the treating healthcare provider or providers for whom the parent seeks a qualified protective order to obtain records or conduct a deposition;

(B) The other parent may file an objection seeking to limit or prohibit the parent or the parent's counsel from obtaining records or conducting the depositions, which may be granted only upon good cause shown that a treating healthcare provider does not possess relevant information as defined by the rules of civil procedure; and

(C) The qualified protective order shall expressly limit the dissemination of any protected health information to the litigation pending before the court.

(3) Any disclosure of protected health information by a healthcare provider in response to a court order under this section shall be deemed a permissible disclosure under Tennessee law, notwithstanding any statute or rule of common law of this state.

(e) Any health care records of any parent who has been involuntarily committed for mental health treatment, including, but not limited to, commitments on an emergency

basis, under title 33, chapter 6, shall be provided only under seal to the court and to the opposing parent, on motion and if no proceeding is pending by certified mail.

(f) Any parent with a diagnosed mental illness, including a diagnosis that is disputed, shall be required to disclose under seal the existence of any such diagnosis to the court and an adverse party. At least annually, for so long as a custody order is in effect, the parent with such diagnosis shall file under seal an updated status report and supporting medical records.

(g) A parent may seek a court to order a waiver of these disclosure requirements if the parent agrees to:

(1) Waive parenting time; or

(2) Only have supervised visitation.

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring it.